DEC 26 1973

SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-971

D. C. TRANSIT SYSTEM, INC., *Petitioner*,

v.

DEMOCRATIC CENTRAL COMMITTEE OF THE DISTRICT OF COLUMBIA, BLACK UNITED FRONT, WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION OF WASHINGTON GAS LIGHT COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF FOR WASHINGTON GAS LIGHT COMPANY AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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MOTION OF WASHINGTON GAS LIGHT COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Washington Gas Light Company (WGL) respectfully moves this court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the petitioner herein has been obtained along with the consents of the attorneys for respondents, Black United Front and Washington Metropolitan Area Transit Commission. However, the attorney for respondent, Democratic Central Committee of the District of Columbia, refused to consent to the filing of the accompanying brief by Washington Gas Light Company as *amicus curiae*.

The applicant, Washington Gas Light Company, has an interest in this case in that it is regulated by the District of Columbia Public Service Commission (PSC). The PSC has adopted the Uniform System of Accounts prescribed for natural gas companies by the Federal Power Commission, which is similar to

the Uniform System of Accounts employed by the Washington Metropolitan Area Transit Commission. There is a substantial risk that the PSC could adopt and will be guided by the decisions handed down by the United States Court of Appeals for the District of Columbia Circuit on June 28, 1973.

WGL owns a substantial amount of real property in the Washington metropolitan area, the current market value of which exceeds its book value. Therefore, any application to it of the newly announced accounting rules would have a serious adverse impact on the Company. By altering consistently applied regulatory accounting practices and applying new rules retroactively, the court below raised a question of serious importance to WGL: Whether continued reliance can be placed on final orders of the PSC.

WGL faces severe energy problems during the decade of the seventies. It must be able to proceed on the assumption that rate orders are final—when established by the PSC and not appealed or upon final adjudication by the courts. The net result of the decision of the panel below, if applied to WGL, accompanied by the energy crisis, will be extremely unsettling to it and to its investors.

Therefore, WGL respectfully prays that the Court grant the MOTION OF WASHINGTON GAS LIGHT COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Respectfully submitted,

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December 21, 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

D.C. TRANSIT SYSTEM, INC., *Petitioner*

v.

DEMOCRATIC CENTRAL COMMITTEE OF THE DISTRICT OF COLUMBIA, BLACK UNITED FRONT, WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, *Respondents.*

BRIEF FOR WASHINGTON GAS LIGHT COMPANY AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF WASHINGTON GAS LIGHT COMPANY

Washington Gas Light Company (WGL) is a corporation of the District of Columbia and the Commonwealth of Virginia. WGL is regulated by the District of Columbia Public Service Commission (PSC), which has adopted the Uniform System of Accounts prescribed for natural gas companies by the Federal Power Commission. This Uniform System of Ac-

counts is similar to the Uniform System of Accounts employed by the Washington Metropolitan Area Transit Commission (WMATC), which in turn regulates the rates of the D. C. Transit System, Inc. (Transit). Therefore, there is a substantial risk that the PSC could adopt and will be guided by the decisions handed down by the United States Court of Appeals for the District of Columbia Circuit on June 28, 1973.

WGL owns a substantial amount of real property in the Washington metropolitan area, the current market value of which exceeds its book value. Therefore, any application to it of the accounting rules newly announced in the opinion rendered last June would have a serious adverse impact on the Company.

By altering consistently applied regulatory accounting practices and applying new rules retroactively, the panel majority raised a question of serious importance to WGL: Whether continued reliance can be placed on final orders of the PSC—the regulatory commission charged with supervision of WGL in the District of Columbia.

STATEMENT OF THE CASE

These cases arise as appeals to the United States Court of Appeals for the District of Columbia Circuit of 1968 and 1970 orders of WMATC. On these appeals, a three-judge panel of the Court of Appeals, with one judge dissenting, held, *inter alia,* that WMATC's longstanding and universally accepted practice of recognizing that growth in the value of a utility's land belongs to its investors was "irrational." The panel majority held that capital gain on land belongs to its ratepayers, not to its investors. There-

fore, according to the court, a public utility's rates should be decreased by the amount of appreciation in the land once it is either sold or transferred to a non-operating status, i.e., "below the line." Moreover, the court applied a new principle of retroactivity to utilities, recalculating the income of the utility for all prior years on the basis of the new rule on capital gains and applying the difference as future income.

The panel majority rejected what it recognized as a longstanding practice of WMATC and its predecessor and held that growth in the value of land while in service should be credited to farepayers (i.e., the ratepayers). It took the position that, although at one time investors may have had a constitutionally protected interest in the growth in value of their property, more recent decisions of this court indicate that they no longer have such protection.

The panel majority applied its new rule with retroactive effect and held that not only were farepayers entitled to the appreciation on parcels that had been transferred but they were also entitled to the growth in value of all parcels of land that had been transferred to non-operating status for the past 17 years. The panel majority thereupon ordered Transit to make total restitution to its farepayers and remanded to WMATC to determine the amount and method of such restitution.

Transit filed a Petition for Rehearing and Suggestion for Rehearing En Banc to the Court of Appeals, which was denied on September 24, 1973. WGL filed a Motion for Leave to File Statement of Amicus Curiae and Statement of Amicus Curiae in Support of Petition for Rehearing and Suggestion for Rehearing En Banc, which was also denied.

REASONS FOR GRANTING THE WRIT

The decision below raises issues of great importance not only to public utilities in the District of Columbia, but to all utilities throughout the country. Although at present the lower court's decision is applicable only to Transit, the danger remains that other regulatory commissions, including the District of Columbia Public Service Commission, will in the future adopt all or part of the principles newly announced by the panel majority. The net result of the decision of the panel if applied to WGL, along with the energy crisis, will be extremely unsettling to it and to its investors. WGL must be able to proceed on the assumption that rate orders are final—when established by the PSC and not appealed or upon final adjudication by the courts—and not subject to further review and change at some unknown point in the future. It must be emphasized that the decade of the seventies is one in which this nation faces severe energy problems. Regulated companies increasingly have to turn to the public for additional financing, and this is no time to inject into the already complex investment picture the many uncertainties inherent in the decisions rendered by the panel majority.

It had been universally established by law until these decisions, that appreciation in the value of land would, at the time of sale, be credited to investors. The panel majority has now ruled as a matter of law that WMATC committed reversible error in proceeding on the basis of these time-honored legal precedents. Moreover, after a review of the equitable considerations which it says must govern, the panel majority, instead of remanding to WMATC for reconsideration in the light of those considerations, has decided for itself that the equities require the entire appreciation under re-

view to be credited to the farepayers. The panel majority has applied its new principles retroactively so as to affect rate orders which have previously been deemed valid and, in some instances, had actually been approved by that court.

If these opinions are permitted to stand, the result is a depletion in the incentive of investors to commit their funds for research and expansion in the vitally important energy utilities. Potential utility investors will be compelled to assume not only the risk that the "rules" in effect at the time of the investment may not have continuing application in the future but also the risk that the financial picture of a utility at the time of their investment is subject to complete recalculation some time in the unlimited future. The effect of the opinion of the panel majority can only be to decrease the ability of the energy utilities to raise needed capital.

We do not here take up the "merits" except to adopt the views expressed by the Petitioner. We strongly urge that the merits deserve review by this Court.

CONCLUSION

For the reasons stated above, we respectfully pray that the Court grant Petitioner's writ and reverse the opinions and judgments of the Court of Appeals in the instant cases.

Respectfully submitted,

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